SOME SUGGESTIONS

ON THE SUBJECT OF

MONOPOLIES & SPECIAL CHARTERS.

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SPECIAL CHARTERS.

Monopolies, No. 1.

The right to freedom of person, freedom of speech, freedom of conscience, freedom of the press, and freedom of trade, seem to be regarded by the most enlightened men of modern times as the most valuable, if not inalienable, rights of the human family, and as those most necessary to the intellectual, moral and industrial progress of mankind. Our rude Anglo-Saxon forefathers, when they emerged from the forests of Germany, seem, from the accounts of the most accurate historians, to have brought with them to England an extraordinary share of these liberties for so early a period in the history of Human Progress. They declared that he who had made three voyages on mercantile adventure should be a titular dignitary, whilst the freedom of internal trade was unrestrained. The overthrow of Saxon liberty, and the establishment of the feudal system in England by the Normans, placed all the most important liberties of the people in the hands of military despots. The people were for centuries seeking the restoration of Anglo-Saxon laws and liberties.

The freedom of internal trade, founded on usage and established by length of time as common law, was broken down. It has been the practice of monarchs in all ages and countries, says *Reece's Enc.*, to seize upon the most profitable trades and valuable articles of internal and foreign trade, and farm them out to rapacious engrossers for large sums, and they reimbursed themselves by the most oppressive exactions on the people. So it was in England. The Barons met King JOHN, sword in hand, in battle array, on the plain of Runymede, and exacted from him the recognition of one of the old principles of Anglo-Saxon liberty in the following stipulation: "All the merchants, if not openly prohibited before, shall have their safe and just conduct to depart of England, to tarry and go through England, as well by land and sea, to buy and sell without any manner of evil tolls, by the old and rightful customs." This was the law, *a fortiori*, as to natives.—2 Inst., 57 : 5 Bacon, 382 ; 7 Bacon, 328.

This great charter, from which so many of the most valuable provisions of the American State Constitutions are derived, was constantly violated by succeeding Kings. It was confirmed, says HUME, thirty-two times. At a later period, it was enacted by 23 Ed., 3, (1325,) that all persons, foreigners as well as natives, may buy and sell, by wholesale and by retail, when here, and how they please, paying the usual duties, and customs, notwithstanding any grants, franchises or usages to the contrary, seeing such grants, usages and franchises are to the common prejudice of the King and people.

ANDERSON, in his History of Commerce, vol. 1, p, 328, says, that if this excellent and well judged statute had been suffered to remain in full force, the nation would have increased much faster in wealth and population ; but the monopolising grants from the crown, and the weight of the towns, had curtailed and prohibited the privileges allowed to all by the act, and though all saw and lamented the evil, it was not easy to be remedied, by reason of the estates bequested and settled on monopolising societies.

HUME first notices the progress of these monopolies in the time of HENRY VII, as having given a check to industry. A company of London merchants had driven all persons not of their company from trading to the Low Countries, except on payment of £70. So HENRY granted to an Italian the sole right to import and vend in England 1300 quintals of alum, and none else to import or vend alum till he sold off his quantity. Thus did this avaricious monarch raise money.—*Anderson, vol. 2, p. 13.*

So HENRY VIII granted the sole right to manufacture and vend certain articles to certain towns, "excluding the open country and prohibiting any one from exercising such trade, who was not a member of the association."—*Hume.* The town of Bridgeport had the sole right to manufacture and vend hats, rope and other articles, conferred on it on the pretext that it was necessary to encourage the investment of capital in these branches of manufacture. But it was in the reign of ELIZABETH that these monopolies were carried to the greatest extreme. She granted, says HUME, to her servants and courtiers patents for monopolies, and these patents they sold to others, who were thereby enabled to raise commodities to what price they pleased, and who put invincible restraints on all commerce, industry and emulation in the arts. It is astonishing to consider the number and importance of these commodities, which were thus assigned over to patentees : Salt, Iron, Cards, Oil, Coal, Glass, Powder, Sulphur, Beer, Leather, Spanish Wool, &c. These are but a part of the commodities which had been appropriated to monopolists. When a list of them was read in the House of Commons, a member cried, "Is Bread in the number?" "Yes," another replied, "if matters go on at this rate, we shall have bread reduced to a monopoly, before the next Parliament." These monopolists were so exorbitant in their demands, that in some places they raised the price of Salt from 16 pence per bushel to 14 or 15 shillings ; such high prices naturally begot intruders upon their trade and in order to secure themselves they were invested with high and arbitrary powers, by which they were enabled to oppress the people," (the power to search houses, indict, and imprison): "whilst all domestic intercourse was thus restrained, lest any scope should remain for industry, almost every species of foreign commerce was confined to exclusive companies, who bought and sold at any price they themselves thought proper to offer and exact." (Amongst others, she granted, by charter, the exclusive right to the Earl of Leicester to the profits of all trade with Morocco, to others the exclusive right

to the trade with Muscovy, and to Sir WALTER RALEIGH the exclusive right to work the Tin mines, and vend Tin in England.)

"These grievances," says Mr. HUME, "the most intolerable for the present, and the most pernicious in their consequences, that ever were known in any age or nation, were brought to the attention of Parliament in the 44th year of the Queen's reign. A bill entitled 'An Act to explain the common law in certain cases,' was introduced to abolish all these monopolies." It was said by Sir FRANCIS BACON, in the debate, that the Queen had both an enlarging and restraining prerogative; that she could grant any subject the right to buy and sell when it was prohibited by act of Parliament, and she could prohibit the buying and selling except as to her patentees, where the law authorized all to buy and sell; that by either of these prerogatives she had the right to create the monopolies complained of. Mr. MOORE said: "I cannot utter with my tongue, nor conceive with my heart, the great greivances that the town and country suffereth by reason of these monopolists. It bringeth the general profit into a private hand, and the end of all this is beggary and bondage to the subject. To what purpose is it to do any thing by act of Parliament when the Queen will undo the same by her prerogative."

Mr. MARTIN said: "I speak for a town that grieves and a country that languishes under the burdens of monstrous and inconceivable monopolies of tin, fish, oil, salt, and I know not what; nay, what not. The principal commodities of my town and country are ingrossed by these blood-suckers of the commonwealth; what will become of us when the fruits of the soil and the commodities of our labor are thus taken from us by warrant of supreme authority?" Sir WALTER RALEIGH said he had increased the employment of her majesty's subjects in the tin mines. —*Parliamentary Debates, Hume's England.*

MACAULEY says: "There was scarcely a family in the kingdom which was not oppressed by the exhorbitant prices exacted by the monopolists. The House of Commons met in a determined mood, backed by the voice of the nation. The coach of the chief minister was surrounded by an indignant populace in the streets of London, who cursed the monopolies and exclaimed that the prerogative should not be suffered to touch the old liberties of England." ELIZABETH gave way, perhaps for the first time, before the storm, for she was old and infirm and BACON informed the House of Commons that the Queen would immediately cancel the most important of the monopolies, probably by *scire facias*, at the instance of her Solicitor-General, because they had been erroneously issued. One member said, HUME says, "if sentence of everlasting happiness had been pronounced in his favor, he could not have felt more joy than that with which he was overwhelmed on the Queen's annuneiation."

ELIZABETH died in the 45th year of her reign, and "our Scotch cousin," JAMES the 1st, on his arrival in England, to gain the affections of the English people, annulled the remaining monopolies. But the exclusive companies, says Mr. HUME, still remained, another species of monopoly, by which all the foreign trade, except that of France, was brought into the hands of a few rapacious engrossers, and all prospect of future improvement in commerce was forever sacrificed to a little temporary advantage of the sovereign. These companies had carried their privileges so far that almost all the foreign commerce of England was centered in London, and the whole trade of the city confined to about two hundred, to fix what price they pleased to the exports and imports of the nation. A committee was appointed to examine into the enormous grievance of monopolies, the greatest we read of, says HUME, in English Story. It was not, however, till the 21st year of JAMES, that an act putting an end to the fallacious claims of the crown, could be passed. By it, says HUME, all monopolies were declared contrary to law, and to the known liberties of the people. It was there supposed that every subject of England had entire power to dispose of his own actions, provided he did no injury to any of his fellow men, and that no prerogative of the King, no power of any magistrate, nothing but the authority of law, could restrain that unlimited freedom. Mr. HUME had attained no knowledge of that sublime principle of American institutions, based on the deliberate assent of an entire people, by which legislative bodies themselves were restrained from the establishment of monopolies or other attacks on the freedom of the citizen.

The 21st section of this celebrated statute declares that all monopolies and all commissions, grants, licenses, charters, and letters patent, to any person or persons, bodies politic or corporate, whatever, for the sale, buying or selling, working or using anything within the realm, and all inhibitions and restraints, and "all other matters in any way tending to the instituting or strengthing the said monopolies, are contrary to the laws of this realm, and so are and shall be utterly void, and in no wise to be put in use or execution." The statute also declares that monopolies shall be tried according to the course of the common law, and gives an action for triple damages to any one who is disturbed by monopolists.

This statute was cautiously worded, so as to declare the existing law and not to make law, because that body had before it the leading case on the subject of monopolies, reported in 11th COKE, and determined in the 45th year of ELIZABETH, which will be noticed hereafter.

The well-understood common law of England, however, did not put an end to the usurpations of the crown, or the rapacity of individuals and corporate bodies, who were willing to pay the King for exclusive privileges, in order to plunder his subjects.

CHARLES I wished to make himself absolute, and dispense with the necessity of parliamentary grants of taxes, and one of the chief modes of raising money was by the sale of monopolies.

HUME says: "The statute of JAMES left an equitable exception in favor of new inventions, (for fourteen years,) and on pretence of this, and the erecting new companies and corporations, was this grievance of monopolies renewed;" and many articles, "even down to linen rags, were put under restrictions."

ANDERSON, in his History of Commerce, vol. 2, p. 638, says: "The crown, in spite of *Magna Charta*, and the statute of 21st JAMES, constantly pretended to the right of granting exclusive privileges and charters, though strenuously opposed by upright judges and juries; and various companies presumed to obstruct separate and independent traders, whom they stigmatized with the opprobrious appellation of interlopers."

HALLAM, a most profound, accurate, and impartial historian, (vol. 2, p. 9,) says: "The greater profit was derived from a most pernicious and indefensible measure: the establishment of a chartered company, with the exclusive privilege of making soap. The recent statute against monopolies seemed

ance. Noy, however, the Attorney General, a man of venal diligence and prostituted learning, and lately a strenuous supporter of popular rights in the House of Commons, *devised this project*, by which he probably meant to evade the letter of the law, since every manufacturer was permitted to become a member of the company. They agreed to pay £8 for each ton of soap made, as well as £10,000 for the charter. For this, they were empowered to appoint searchers and exercise a sort of inquisition over the trade. Those dealers who resisted the interference were severely fined by information in the Star Chamber. This precedent was followed till monopolies in transgression or evasion of the statute became as common as they had been under ELIZABETH and JAMES." Charters of monopoly were granted for the sole making and vending hatbands, gut-strings, spectacles, combs, tobacco, beef, &c., &c.—*Anderson on Commerce.*

CHARLES raised about $1,000,000 per annum by sale of monopolies, an extraordinary sum for that age.

The King, says HALLUM, feeling the necessity of removing the public odium when hard pressed by the Republican Army, revoked all those monopolies by proclamation, issued at York, in 1639. His attempt to raise money by sale of monopolies, ship-money, and other devices, lost him his head.

His successor, CHARLES II, granted a charter to the East India Company, with exclusive privileges, and this monopoly was sustained by a corrupt and subservient court, chiefly on the ground, as BACON says, that it was a trade with infidels. It was afterwards confirmed by Parliament. It was a gigantic monopoly whose whole history is stained with blood and pillage unequalled in the annals of the world. It was abolished as a trading company in 1832, and not a vestige of monopoly is now left in the foreign trade of Great Britain.

During this long struggle, the power to establish monopolies rested on *the assumed royal prerogative to suspend law for the benefit of individuals.*

In the reign of JAMES II, he consulted his judges as to his power to suspend the law against Catholics. The judges denied his power. He removed them, and substituted subservient instruments in their places. They declared he had the power. (See HALE'S case, BACONS, Prerogative.) He then, by proclamation, suspended the laws. This more than all other causes, lost him his throne, and led to the revolution of 1688. In the Bill of Rights then made, it was asserted that all pretended dispensations with statutes, by royal authority, were illegal and void.—STEPHENS on the British Constitution.—*Bacon's Ab., Macauley's England.*

Thus ended forever the power to create monopolies, by suspension of general law, for the support of private rapacity, after the exercise of that pretended prerogative had severed the head of one monarch from his body, and driven another from his throne.

Monopolies, No. 2.

When the framers of the Constitution of 1796 met they were doubtless aware of the fact that in a free government all legislative power was vested in the people, and consequently in the representatives elected by them to legislate, except so far as that power was limited by prohibitory provisions in the federal or state constitutions, and that the legislative branch of the government they were about to organize would have the power to authorize monopolies unish Parliament had the power to establish monopolies, and all the States of this Union, it is believed by the author of this communication, had the power till the last few years to authorise monopolies except three, Tennessee and two others.—[*Kent's Com.*]

Tho framers of the Constitution of Tennessee had doubtless the history of the oppression of the people of England for centuries, by the monopolies there established in opposition to the Great Charter and 22d James. They therefore declared that monopolies were contrary to the genius of a free state, and should not be allowed. This is a broad and unqualified prohibition, and without any exception whatever. This provision, like many others found in the Constitution copied from the Great Charter and the bill of rights of 1688, was addressed to the legislative department, which in England was addressed to the executive. [Fisher vs. Dobbs. Yerger.] The coincidence between the language of Hawkins and the terms of the Constitution is striking. The Constitution declares that monopolies are contrary to the genius of a free state and shall not be *allowed.* Hawkins says, "A monopoly is an *allowance* by the King to a particular person or persons of the sole right of buying, selling, making, working or using anything whereby the subjects in general are restrained from the freedom of manufacturing or trading which they had before."

And in the language of the statute of James declaring the common law "all commissions, grants, licenses, charters and letters patent to any person or persons, bodies politic or corporate of the sole right" aforesaid, "relating to any known trade, are void by common law as being against the freedom of trade and restraining persons from getting an honest livelihood by a lawful employment."

To constitute a monopoly the person must be "allowed" the sole right to manufacture or trade in any known trade or lawful employment, and others who had the right before must be restrained. The statute of JAMES uses the most broad and unqualified language as to the mode of acquiring the right. It is immaterial whether this right be allowed by commission, license, grant, or letters patent, it is void.—The monopoly shall not be "allowed."

Tyrant after tyrant, by combination with rapacious individuals, had, through a succession of centuries, by force and fraud, evaded the law. Hence the statute of JAMES exhausts the terms of the English language to apply a comprehensive negative on the power of the crown to allow a monopoly.

It is immaterial whether it be by license or commission, for a longer or a shorter period, or at the pleasure of the King or the legislature. It is immaterial whether it be by irrevocable grant and absolute contract for a term of years or by letters patent revocable by proclamation of the King, or of the Legislature or by act or resolve. It is void. It shall not be "allowed" So long as the citizens in general are restrained from the profits of a lawful calling and the sole right to the profits are enjoyed by a person or persons or bodies corporate, so long does the monopoly exist, because during the existence of such time, the other artificers or traders are impoverished and the public injured. This mischief shall not, therefore, be permitted, tolerated, "allowed" under any circumstances or by any mode acquired or held.

It cannot, therefore, be said that, to create a monopoly, the sole right to manufacture or trade must rest on a consideration or contract or grant irrevocable. Tho meaning of the definition of HAWKINS,

monopoly. The actual injuries to the people in general by the sole fruition of the profits of a lawful trade resting on act, resolve, or revocable grant, would be as great as if it rested on irrevocable grant. It is not the mode of acquiring the right, or the capacity to defend the tenure of the right for any time. It is the fact of the existence of the sole right, and the exercise of it, that creates the misehief and makes the legal monopoly. Nor is it necessary, according to the definition, that the King or the legislature should contract not to give this right to others during a longer or shorter term of years; for such a construction would enable the legislature to perpetuate all the oppression and injustice the statute of JAMES and the constitutional provision were intended to prevent. The British Parliament declared that there should be no bills of credit issued within sixty-five miles of London by any but the Bank of England. Can it be said that this is more or less of a monopoly whether it rested on contract not to give the right to others or on act or joint resolution prohibiting all others and granting it to the Bank of England? It is thought not, because those prohibited are deprived of a lawful employment and the public of the benefits of competition in commercial credits.

If the Legislature were to pass a law to prohibit all persons from carrying passengers or freight between Memphis and Nashville either by stage, Railroad, waggon, or otherwise, except those who were chartered by the Legislature to carry passengers and freight between those two points, and then were to charter a Steamboat, or stage, or Railroad Company to carry passengers and freight between those points, would it be less a monopoly because the Legislature had the power to repeal the act prohibiting others? It is contended not! Because if this constructive limitation of monopolies were the law, the public could be deprived of the benefit of free competition in the carrying trade, and the citizens in general, of the right to make an honest livelihood by a lawful employment, and the Legislature have the power to perpetuate monopolies in every branch of business.

Now the main question arises, was banking a "known trade," "a lawful employment," the right to the profits to which all the citizens of the State were originally entitled to as of common right? Have they been deprived of the right to this known trade, and has this right been granted as a franchise to a small portion of the citizens of the State? Has the amount of capital which can be employed been fixed and limited? Have certain towns been designated at which this trade could be carried on and others excluded, and has the number of persons who have the right and power to engage in it been limited, so as to exclude the great body of the people of the State? In a word, has a monopoly been created, permitted, tolerated, "allowed" in this branch of business? This will be answered in another article.

Monopolies, No. 3. -- State vs. Kirtland.

Is the business of banking a trade, derived not origirally from law, but from the known rights of men, belonging in common to all members of the body politic? If it be, then the act of 1827 against private banking is void as creating a monopoly, and all persons have the common right to engage in this as in all other lawful trades.

Offices for keeping money, charging for the keeping it, as the Bank of Amsterdam did, or paying for the use of it whilst keeping it, as some banks do, are mere commercial fixtures, and the business a simple commercial agency. It is found by experience, says Gilbert and McCulloch, that where money accumulates and commercial transactions are large, there is less loss by fire, robberies, and other causes, in public depositories, than where each trader keeps his own money in his own strong box. Payment by check, also, saves time, trouble and loss by handling money, so that banks of deposit are just as necessary an incident of large trade as warehouses are for the keeping of cotton, tobacco and other products of the field, forest and shop. The establishment of these offices, therefore, grew up from the necessities of trade, based on the natural liberty which every man, in the language of Mr. HUME, has to dispose of his own actions, provided he does no injury to his fellow-men.

This class of commercial agents arose in England, in the time of the STEWARTS, and were Jews and Goldsmiths of Lombard street, London. (MACAULAY'S England.) This agency arose no more from express law than did the right to work in iron or bake bread for the public. So the dealing in Exchanges, or the purchase of drafts on distant points and selling them again, or the transmission of metallic money to distant points, and selling it to applicants who want money at such points, without the risk and expense of carrying it themselves; this is a simple commercial agency, a trade, and offices are established all over the commercial world, where men can get drafts on points, which will be paid when presented, and which is therefore safer than to carry money, either metallic or paper.

This business was not, therefore, derived from grant, commission, or legislative authority, but from the known rights of freemen, operating on the necessities of human intercourse and traffic.

Bankers who loaned money, who kept money, and who furnished at their offices applicants with money at distant points, existed among the Jews, Greeks, and Romans, and have, from time to time, sprung up in all parts of the commercial world, without any pretence that it was necessary to have any express legal warrant for their establishment. Banks in California, which keep metallic money, and deal in exchanges, amply sustaining the price of labor, the price of property, and all the great operations of exchange, sprung up, as a part of the necessary fixtures of trade, with all the advantages which result to the community from competition in any department of business.

Mr. GALLATIN, whilst acting as the able and efficient President of the National Bank of New York, expressed his astonishment that the statute books of New York should ever have had any prohibition of the free establishment of such banks.

And Mr. JEFFERSON expressed the opinion that such banks should receive encouragement by permitting them to charge higher interest, as they performed all the necessary functions of banks, without the issue of notes, which, in the very nature of things, could not be redeemed on demand. In the very dawnings of trade in every civilized country, no sooner were contracts made and debts created than evidences of debt arose in the shape of promissory notes. No special statute created them or gave them validity as evidences of debt. They arose from usage, from custom; and no doubt but their transfer in the payment of debt, arose in the progress of trade from the same usage, till their negotiability became established law. Chancellor KENT declares they were negotiable on the Continent and in England, long before the statute of ANNE. It is

of credit of the London goldsmiths, were negotiable long before the passage of that act. The traders of London took them, and they passsd from hand to hand as money, because they believed they could get the money when demanded from the goldsmiths, who had given them for money deposited for safe keeping.

But it is wholly immaterial whether these bills of credit, as they were called, were negotiable by the usages of trade or by statute of 8th and 9th ANNE, or by the act of 1762 in force in Tennessee; that moment they became negotiable, that moment did the right to issue them to any extent in the payment of debts, or to loan them as a currency, arise. It became a separate pursuit, belonging to each and every member of the body politic, to exercise when and how and where he pleased, founded in the negotiability of notes payable to bearer on demand. Experience has shown that these notes have power to expel the whole metallic currency from the country where circulated, and to afflict the country with such deplorable derangement in all trade as to have induced WASHINGTON, JEFFERSON, and JACKSON to express the deliberate opinion that their circulation ought not to be tolerated, but that they ought to be suppressed. Still, it has never been denied that their issuance by individuals, as bills of credit, was in violation of no law, but was founded on the negotiability of notes payable to bearer, and belonged to each individual member of the community as of common right.

The system of banking, in all its departments, sprung up in England, Scotland and Ireland, without any express law authorizing or establishing it, the partners liable as others to their debts, and to have their property seized instantly on the commission of an act of bankruptcy, and though the system has been regulated by the prohibition of all notes under $20, to keep on hand a supply of metallic currency, still the right was founded on common right, and not on act of parliament. So, under this common right belonging to every citizen, banking associations sprung up in New York State, under articles of association, the individuals composing it being liable for all the debts of the association. It was under this common-law right that the banking house of YEATMAN, WOODS & Co., a firm of great capital, financial ability and integrity, sprung up in Tennessee, without charter, and continued in the business as partners for more than ten years, successfully and profitably; and it has been on this common ground that the right to issue change tickets was exercised with acknowledged validity till prohibited by statute law.

The Chief Magistrate of the United States, in a message vetoing the Bank of the United States, in 1832, said: "Banking, like farming, mining or manufacturing, or any other occupation or profession, is a business, the right to follow which is not originally derived from the laws. Every citizen, and every company of citizens, in all our States, possessed this right till the Legislature deemed it good policy to prohibit private banking by law. If the prohibitory laws were now repealed, every citizen would again possess the right. The State banks are a qualified restoration of the right which has been taken away by law against banking."

There was no law against private banking in Tennessee till the year 1827. That act decclared that "no corporation unless chartered by the laws of the United States or of the State of Tennessee, no association, company, individual, or individuals, shall erect, establish, institute, or put in operation any office of deposite or discount, or shall issue any bank bills, company bills, bills of exchange, promissory notes or other instrument, with the intent, view or purpose of putting in operation any banking institution or concern, or office of deposit or discount," and if they do so, they shall be indicted and on conviction be fined $10,000. By subsequent enactments they subjected those who issued change tickets to a similar penalty. If there had been no banks in existence and none chartered afterwards, these statutes would have placed Tennessee in the condition of California, Texas, Oregon, Mississippi, or Arkansas as to a paper currency. But there were two banks in Tennessee at that time, the Bank of Tennessee and YEATMAN, WOODS & Co. They gave YEATMAN, WOODS & Co. till 1835 to wind up on the payment of $1000 tax per year, and in 1832 the legislature gave that firm till 1840 to close their concerns. There, then, is a sweeping prohibition of the right of banking, founded on the fact that the right existed unless it was prohibited. In 1804, New York had passed a similar law restraining private banking; and in 1819 a bill was filed by the Attorney General against the Utica Insurance Company to restrain said company from the exercise of the right to enagge in the business of banking, and to enforce the rights of the existing monopolists to the sole profits of the business. Chancellor KENT dismissed the bill for want of jurisdiction, but declared that a right to engage in the business of banking was a right belonging by common law to every member of the body politic, but that after the passage of the act of 1804 it was a franchise derived from legislative grant.

The Supreme Court of Tennessee declared the same opinion in 11 Hum. p. 1, citing the opinion of the chancery court of New York in 1819.

It must be regarded, therefore, both as an historical fact, on reason and judicial authority, that the prohibitory act of 1827 deprived the people of the State at large of a known and lawful employment, and that the charters subsequently granted gave the sole right to the profits of this trade to those persons who own the stock.

It is contended that the conjoint force and operation of the prohibitory law of 1827, and the special charters granted, create a monopoly within the meaning of the Constitution and of the statute 21st JAMES, declaratory of the common law. The Supreme Court of New York, in 1838, said that *banking in that State was the subject of monoyoly by special charters from the date of the restraining act in* 1804. *till* 1838, *when the restraining law was repealed.* 1 Smith Rep. The great republican principle of uniformity and equality in law was vindicated in the passage of the act of 1838. There was no provision in the constitution of New York prohibiting monopolies.

It was under the prohibitory law of 1827 that Mr. KIRTLAND, of Memphis, was indicted in the criminal court at Memphis, for the establishment of an office of deposit and exchange at Memphis. He had no chartered to keep the money of the people who wanted to deposit with him for safe keeping, or to buy a bill of exchange from one man and sell it to another He was, therefore, convicted and fined ten thousand dollars. He appealed to the Supreme Court. But before action on it he was discharged by an adroit act of legislation at the last session; thus showing an unwillingness to excute the law. It is insisted that if the legislature gives the sole right to charter companies to shoe horses, or bake bread for the public, make public depositories for money or produce, the right cannot operate to exclude others; that it is void as to others; that unless it was the

entirely, made manifest by the terms of the act, the prohibition would be void. Mr. KIRTLAND was wrongfully convicted, if the case of Darcey, *vs.* Allen, 11 Coke, be law. The trade must be granted to all or refused to all. The business of banking is therefore open to all to engage in it. If there has been any adjudication in the State defining what a monopoly is it has escaped the research of the author of this communication. The little value attached to the monopoly of this business in the earlier periods of the existence of this commonwealth must account for this absence of judicial investigation.

Monopolies, No. 4.

The act of 1827, prohibiting all persons not chartered, from buying and selling bills of exchange, from receiving money for safe keeping, and from issuing bills of credit as a business, carries on its face no evidence of an intent to suppress as a public and general evil, the existence of banks, performing all the functions of banking; on the contrary, it bears the most satisfactory evidence on its face, that the Legislature intended to confine the profits of this trade to its special grantees, and to exclude all others.

It did, in point of fact, establish a practical and legal monopoly, at the very moment of its passage, in the existing grantees of the State. The fact that the act taxed all existing unchartered associations $1000 till they closed their concerns, authorized ex-officio prosecutions against them, with power to send for persons, as in case of gaming, and authorized the Governor to employ counsel to aid in enforcing the law, shows conclusively that the Legislature expected resistance to this exclusion of others from the benefits of a lawful trade. YEATMAN, WOODS & Co., doubtless believed that the State had no right to prohibit them from a fruition of the profits of a lawful trade, in which they were successfully engaged. The stringent measures thus adopted by the Legislature to enforce a fine of $10,000, leaves no doubt of their intention to enforce the rights of the monopolists by as stern a movement as Queen ELIZABETH, or CHARLES the First did, by information in the Star Chamber. The successive charters granted from session to session, leaving the whole pursuit in the hands of chartered companies to this day, puts the question beyond a doubt—the fact of an exclusive enjoyment of the profits of the trade exists by operation of law, and by express intention on the part of the Government.

It is not insisted that the charters granted to the Union Bank and other banks are void; but the prohibition to others is void, for the Legislature has the power to charter companies, and the grant to companies of the right to keep money on deposit, buy and sell exchange, and issue notes, is only a grant of rights which they, as well as every other member had the right to exercise before they were incorporated; and it is true there was no sole right given them by contract on the face of the charter. The charters must be construed in connection with the law of 1827. No direct grant by any King of Great Britain to any person or body politic of the sole right to the profits of a trade, conveyed a more manifest intent of monopoly than does the act of 1827, and the charters enacted before and afterwards. None ever established a more thorough, practical monopoly for more than thirty years, excluding all parties from rising up here, as YEATMAN, WOODS & Co. did, and engaging in this business on their own responsibility and property. As there are probably twenty men whose estates would each at $100,000 now in the State, where there was one in 1827, there is a still greater probability now that they would rise up and employ their capital as YEATMAN, WOODS & Co. did, than at that time.

The result of this legislation has been to establish, by general law and charter, a practical monopoly

What are the authorities bearing on this subject?

HAWKINS says: "It hath been adjudged that the King's grant to any person or corporation of the sole right to import any merchandize is void, whether prohibited or not;" that is, if the importation of Spanish wines was prohibited by act of Parliament to encourage the growth of wine in England or for other cause, and PHILIP and MARY suspended the law, and by license authorized the corporators of Southampton to import wine, and an action were brought against the corporators for the violation of the act of Parliament, the importers would be liable to the penalties of the act. Their license would be void, for the King cannot *suspend* the law, so as to produce a monopoly in favor of particular individuals or corporators.—*Bacon, Title Prerogative;* 2 *Inst.* 62; 3 *Inst.* 182.

But if, on the other hand, all the citizens of England were entitled by the law of the land—"by the old and rightful custom"—to import Spanish wines, and PHILIP and MARY issued their grant to the corporators of Southampton, giving them the right to import Spanish wines and prohibing all others from importing Spanish wines, whether in the face of the grant or by proclamation, the grant would be good as to the right to import Spanish wines, for the corporators had the right to import Spanish wines before, and the grant of PHILIP and MARY gave them no right which they did not have before; but the prohibition as to others would be void, for they had no right to suspend the law authorizing the importation, so as to create a monopoly in favor of the corporators of Southampton. If, then, Banking were a lawful trade, to the profits of which all the citizens of the State were entitled, and the Legislature makes this trade unlawful as to the great body of the people, and declares them liable to severe fine if they presume to exercise it without grant, and then grant the right to certain corporators, is not this a clear and unquestionable case of monopoly; and would not the prohibition be void, and the whole of the citizens of the State restored to their natural rights to pursue a lawful calling? It seems difficult to distinguish between the two cases.

The leading case on the subject of monopolies is reported in 11th COKE, decided in the midst of the excitement against Queen ELIZABETH, in consequence of her grant of numerous and oppressive monopolies. The action was by DORCEY, assignee of BOWES, against ALLEN, for an invasion of his rights of monopoly. The declaration stated that the Queen granted by patent to BOWES, who assigned to DORCY, the sole right to import, manufacture, and vend playing cards for twelve years, which was renewed for twenty-one years; that no other person should import, manufacture, or vend them, on pain of fine and imprisonment; and that, in consideration of said grant, he bound himself to pay to the Queen one hundred marks per annum; and that defendant ALLEN had manufactured and sold one hundred gross of playing cards.

The defendant replied that he was a free citizen of London, and had the right to manufacture and vend playing cards. By the court; it is a monopoly. All trades which employ men are profitable to the Commonwealth, and therefore a grant to the plaintiff of the sole right to import, manufacture, and vend is

gainst the liberty of the subjeet. It tends to the mpoverishment of artificers who before had maintained themselves and families in the trade. The rant of the sole right to the pursuit of any mehanieal artifice is not only a damage to those who xereise the same trade, but to all others, for the rice of the commodity will be raised to all others. Ie who has the sole right to sell will put whatever riee he pleases on the article sold.

The seeond incident to a monopoly is that the arele sold is not so good and merchantable as it was efore, for the patentee 'regards his own profit and ot the good of the Commonwealth. Such charter f monopoly is against divers acts of Parliament, which extend to all things vendible.

When Parliament passes an act which restrains the mportation of foreign fabrics, to the intent that he subjeets of the realm might apply themselves to the making of the same, and thereby maintain themselves and their families, a royal grant to any one for the sole importation of such prohibited artiele is against common law and a monopoly, for this is not to maintain the poor artificer, but to destroy his means of subsistanee.

These authorities would seem to sustain the position very satisfactorily that Banking being a lawful trade, the prohibition on the mass of the people with the express purpose, manifest on the face of the prohibitory act, of securing to the grantees of the government the sole right thereto, is creating a monopoly as unquestionably as ELIZABTH or CHARLES did in their grants; that the prohibition on the freedom of trade is void; that the Legislature violates the Constitution when it passes any such enactment, disposing of the lawful trades to a few persons; that such acts are of no effeet, and the citizens of the State have the right to establish banks of deposit and circulation just as if no such law existed.

There are some features in the bank charters that may deserve a passing notice.

The fact that these chartered companies were open to all who should succeed in getting the stock does not ehange their charaeter. As soon as the stock was taken the subscribers were the sole grantees of the State. The celebrated charter of CHARLES 1st for the sole manufaeture and vending of soap in London was an open stock company, according to HALLUM, and made to evade the statute of 21 JAMES. It was invented by NOY, Attorney General, and was the preeedent of the monopolies which aided, in a very great degree, in taking CHARLES's head from his body, and this fraudulent evasion of the statute has brought this Attorney General down to posterity as a man of "venal diligence and prostituted learning." All the leading historians do not hesitate to denounce this charter as establishing a monopoly, bringing all the evils of a direct grant by name to individuals.

HUME, HALLUM and ANDERSON regard it a monopoly, in violation of the great charter and 21st JAMES. Such a grant by name as the grant of Queen ELIZABETH to Sir WALTER RALEIGH, of the sole right to manufacture and vend tin in England might avoid the contest for stock, which might arise in the ease of the soap charter of CHARLES, but both were characterized and regarded as monopolies, equally injurious to the public. Sir WALTER and the company of soap boilers were equally possessed of the sole right, and were equally the grantees of the crown. There is not a stockholder in a bank in the State who does not hold that he is a grantee of the State.

These charters have specified certain towns in which offices ean be established for keeping money, in which bills of exchange can be bought and sold and in which bills of credit or bank notes can be issued, and all other towns and places are excluded from this right.

Now Mr. HUME does not hesitate to regard the grants of HENRY the 7th to the inhabitants of certain municipal corporations the sole right to manufacture certain artieles, excluding the open country and other towns as tyrannical interferences with industrial freedom and as monopolies. So Anderson characterises the grant of HENRY the 8th to the inhabitants of Bridgeport of the sole right to to manufacture and vend hats and rope as monopolies. *History of Commerce.* So the grant of PHILIP and MARY to the corporators of South Hampton of the sole right to import Spanish wines, was a monopoly and void by common law. *Bacon Ab.*

No man can keep money for others as a trade, except by charter, and the legislature selects the place and excludes all other places. If the Legislature should say that no persons but the inhabitants of the towns of Nashville, Memphis and Knoxville should have the right to manufacture and vend hats, saddles, or keep warehouses for produce, it would be regarded an outrage on the freedom of trade and a monopoly which would be hooted down by acclamation: yet the differenee is in the value of the monopoly to the grantees and the injury to the public, and not in the difference in the principles on which they are founded. The bank charters do not confine the right to the inhabitants of any municipal corporation, but fix the place at which the trade shall be carried on, and exclude all other places.

So also these charters, by all of the act of of 1827, fix the amount of capital which shall be employed in the trade, so that when that amount passes into the hands of the grantees of the State it is monopolised and no other capital can be employed in the trade. Capital is the mainspring which puts all industrial enterprise in motion, and if it be assumed that any trade is necessary for the common good, on what principle can the government undertake to limit the amount to be employed and the places at which the trade shall be carried on, so as to make an actual monopoly both as to persons and places?

This reminds one of the constant practiee of the despotisms of the old world, where the sovereign wields the industrial movements of the nation, and the people are the machinery. The legislative department may regulate all trades by general laws applicable to all engaged in any one department. But if the provision against monopolies be not a dead letter in the Constitution, it is difficult to see by what authority the Legislature can designate the persons, places and amounts of capital which can be employed in all or any of the known and lawful trades. Where will the power of the Government stop, if the government can say that Mr. KIRTLAND cannot keep a warehouse for produce or office of deposit for money, but that right shall belong exclusively to certain individuals under chartered authority to keep such house at certain places, and employ a limited amount of capital? Why not prohibit all persons in the State from engaging in the business of baking and blacksmsthing, except such as shall be chartered by the laws of the State, and then charter companies located at Knoxville, Nashville and Memphis to do the sole business?

But to state a more reasonable case: There are many Iron mines in the State which are not worked, and we buy Iron from abroad. Suppose the Legislature were to pass an act to encourage the manufacture of Iron, by which it was declared that no person should manufacture and vend Iron in the State except such companies as the Legislature

should from time to time charter, and should then charter such persons as should own mines, exempt them from an individual responsibility for their engagements, select ten towns in the State in which it could be sold and exclude others, limit the amount of capital they should employ, fix a price on Iron beyond which they should not sell, declare that if any one not chartered sold Iron he should be subject to a fine of ten thousand dollars, and that to ascertain and find out these "free traders and interlopers" on the rights of the monopolists, the Attorney General should prosecute *ex officio*, and send for persons and papers, as in case of gambling. *See Act of* 1827. And suppose, to guard the sole rights of the monopolists, the Iron sold by all others should be forfeited, and searchers ap-pointed as in ELIZABETH'S time, and the chartered companies have a right of action as in 11 COKE, would this be a monopoly?

Establish the principle that the government has a power to grant by charter contract, the sole and exclusive profits of banking for a term of years, and it follows irresistibly, that the government has the same right and power to grant by irrevocable charter to a few individuals the right to the exclusive profits of every other trade for a long term of years or forever. If such a power exists it is high time the delegates of the people were assembled in convention to take from the government powers so liable to be abused, and so sweeping in their consequences if carried out. If the Legislature have the power to deprive 200,000 citizens of Tennessee of any trade and give the sole profits of that trade to a company of 1,000 persons, for ten, fifty or one hundred years, then there ought to be a convention assembled in the next year to remove the possibilty of such results.

Fortunately no such power exists to create such monoply founded on contract revocable grant or otherwise.

Special Charters, No. 5

The Convention of 1796 inserted in the Constitution of Tennessee a prohibition against the grant of monopolies by the Legislature. The Convention of 1834 took a further step in the same direction. The author of this communication, a member of that Convention proposed a special committee to ascertain and report what provisions could be inserted in the Constitution to diminish the time and cost expended in private and local legislation. This committee reported sections 4, 5, 6 and 7 of the 11th article, nearly as they now stand in the Constitution.

The Legislature had expended much time and money in granting divorces.

The fourth section declares that the Legislature shall grant no more divorces, but that they might authorize the courts to grant divorces for specified causes, declared in general laws, equal and uniform throughout the State.

The laws of the State prohibited lotteries, which were indictable as a demoralizing description of gaming. The Legislature was in the habit of suspending this prohibitory law, and making special grants of lotteries. The Constitution declares that no lotteries shall be authorized by the Legislature. The uniformity of law, as to all, was thus vindicated and sustained.

The Legislature had chartered the Union and Planters' Banks with power, in certain cases, to take more than six per cent, the lawful interest, all others were entitled to take. This was considered by the committee as unequal, unjust, and violating

The Constitution, therefore, declared that the rate of interest should be equal and uniform throughout the State. putting it out of the power of the Legislature to grant to favorite corporate bodies, such unjust advantages over the balance of the citizens. It was declared by the committee that banking was a right belonging to all, and that most of the citizens had been deprived of this right which had been granted by charter to a few. That this was a monopoly.

At page 190 of the journal of the Convention will be found the following:

"Mr. Humphreys, from the Committee on Private and Local Legislation, recommends the following addition to the Constitution:

"The Legislature shall have no power to suspend any general law for the benefit of a particular individual or individuals; nor to pass any law for the benefit of individuals inconsistent with the general law of the land; nor to pass any law granting to any one individual or individuals, rights, privileges, immunities, or exemptions, other than such as may be by the same law extended to any member of the community, who may be able to bring himself within the provision of such law; *Provided*, always, the Legislature shall have power to grant such charters of incorporation as they may deem expedient for the public good."

The committee, in the report, state that it is impossible to prohibit all local and private legislation, without injury to the permanent interests of the State, but declare that much of that description of legislation will be cut off by the above provision. They specify a few instances. They say that 96 persons had been authorized in two sessions to hawk and peddle, and retail spirituous liquors without license. These special privileges granted by the suspension of general law would be prohibited. They declare that it would cut off the power to make special grants of letters of administration the release of fines and forfeitures by special act, and put an end to applications to authorize the suspension of laws declaring streams navigable, and to authorize the obstruction of such streams by fish-traps and mill-dams for the benefit of individuals. They declare that it was impossible and unnecessary to state in advance all the cases in future legislation to which it would apply. They also declare that numerous provisions were to be found in the Constitution which were intended to prevent assaults by the Government on the rights of individuals, and that it was also necessary to protect by proper provision, the body politic against the rapacity of individuals.

These views of the committee of the convention are here put forth to show the general purport of the provision under consideration, to wit: the prohibition of special privileges and exemptions by special act, and the establishment of equal rights by the operation of general laws.

The proviso to the seventh section did not give to the Legislature power which it did not possess before; for the Legislature had exercised the power, to create corporations, from the formation of the constitution in 1796, down to that period, and the existence of that power had been affirmed by the Supreme Court of the United States, and of the State of Tennessee. It was believed by the committee that the enacting part of the seventh section would deprive the Legislature of all power to create a corporate body even for schools, towns, &c., &c., unless that power was limited by the proviso which was appended to it. It was therefore appended to

g the power in the hands of the Legislature, modi-ed to a certain extent by the enacting part of the ause. How far is the power to create corpora-ons and invest them with privileges and exemptions tained in the hands of the Legislature? According the construction which this section has heretofore ceived, it has been considered that the whole of e restriction made on the power of the Legislature grants to individuals might be yet made on grants to rporate bodies. It has been construed as if it meant follows: The Legislature shall have no power to spend the general law which declares Duck River vigable, in order by such suspension to authorise HN JONES, JOHN THOMPSON, and JOHN BROWN, to ect a mill dam and fish trap on that stream, but at the Legislature having the power to create ch charters of incorporation as they may deem pedient for the public good, have the power to in-rporate the said JOHN JONES, JOHN THOMPSON, and HN BROWN, under the name of the Duck River mill d Fish Trap Company, and thus authorise such ill and fish company to obstruct that river for eir benefit.

So, according to this received construction, the egislature has no power to pass any law authoris-g JOHN JONES, JOHN BROWN, and JOHN THOMPSON, to tail spiritous liquors without complying with the eneral laws operating on all the other citizens of e State in regard to the retailing of such liquors ut the Legislature may incorporate the aforesaid HN JONES, JOHN BROWN, and JOHN THOMPSON, un-er the name of "The Tennessee Whisky Manufac-ring, and Retailing Company," and thereby author-e, under cover of a corporation created for the ublic good, the same individuals to retail liquors, ithout a compliance with the laws operating on the ther citizens of the State, who may wish to engage the same business.

So, according to the received construction of the th section, the Legislature has no power to pass ny law exempting the aforesaid John Jones black-mith, John Brown iron manufacturer, and John Thompson cotton manufacturer, from individual iabilities for the whole of their engagements, fur-her than for stock invested, as grants to the afore-aid individuals by name, and other rights, immuni-ies, privileges, or exemptions, except all the other otton manufacturers, iron manufacturers and lacksmiths in the State are granted the same ights, privileges, immunities and exemptions, who nay bring themselves within the provisions of the aw; but the Legislature has the power to incorpo-ate by special act, the aforesaid John Jones, black-mith John Thompson, iron manufacturer, and John Brown, cotton manufacturer, and thus "by harp practice," exempt John Jones, John Brown, nd John Thompson from liability for their debts, nd give them other exemptions without giving all he other blacksmiths, iron manufacturers, and cot-on manufactures the same exemptions and privi-eges.

So, according to the received construction, the Le-islature cannot exempt John Johnson, dealer in de-osites, exchanges, and issuer of notes, from the ayment of his liability except to a limited amount, nless all other dealers in deposits, &c., are by the ame act given similar advantages; but the Legis-ature may, by special act, incorporate John John-on, by the name of "The Bank of the Universe," nd thus exempt John Johnson from liabilities for is engagements, and enable him to convert "the as-ets" of the Bank of the Universe into individual other dealers in deposits and exchange the same opportunities to defraud the public.

If this construction were the proper one, it would make the proviso abrogate totally the enacting part of the section, and enable the Legislature, under cover of charters of incorporation, to grant to individuals, all the rights, privileges, and exemptions which the 7th section was intended to prohibit. Can that construction be correct, which enables the Legislature to produce, in the operation of its general laws, those very inequalities, those unjust advantages, which this constitutional provision was intended to correct? How far then does the proviso in this section limit the enacting part.

The Supreme Court of the United States say: "It is a general rule of law which has always prevailed and which has almost become consecrated as a maxim in the interpretation of Statutes that where the enacting clause is general in its objects and language and a proviso is afterwards introduced, that proviso is strictly construed and takes no case out of the enacting clause which does not fall fairly within its terms. In a word, a proviso carves special exceptions out of the enacting clause, and those who insist upon any such exception must establish it as being within the words as well as within the reason thereof."

The enacting clause is to be construed with a view to suppress unequal legislation and establish the operation of general law. The proviso must be construed strictly, that, is, it must interfere with the operation of the enacting clause only so far as the words and reason of the thing imperatively demand.

Can that, then, be a proper construction which makes the proviso nullify the enacting clause?

The enacting clause was intended to prohibit the grant of special privileges and exemptions to either individuals or corporate bodies unless by general law, embracing all of the same class of men or same department of business, leaving in the hands of the Legislature the power to create valid corporations competent to the purpose of organizing many individuals as one person in law; for when statutes are enacted imposing burthens on persons, corporations are held to be included. [*Bacon's Ab.*] Many of the statutes in the statute books giving rights to individuals and persons, and enacting prohibitions are declared by judicial decisions to apply to corporations. It is difficult to conceive on what ground there should be a sweeping provision against the grant of peculiar privileges to individuals and none against the grant of such privileges to corporations. Corporations are not in the general so readily amenable to criminal process. Their greater want of sensibility to public opinion is admitted by the candid and thinking persons, and there is some truth and philosophy in the coarse remark of Mr. COBBETT that "Corporations have neither bodies to be kicked nor souls to be damned." There is, therefore, nothing to be found in the words of this section nor in the reason of the thing which would allow the Legislature to grant all manner of exclusive exemptions and privileges to corporations and deny them to individuals. The reason is the other way.

It is perfectly in harmony with usual judicial interpretations of statutes to declare that the words of the enacting clause embrace corporations as well as individual persons. This view becomes imperative when the opposing construction lets in all the inequality of legislation which the words of the section intended to prevent.

the body of the enacting clause? What exception is carved out of the enacting clause?

The Legislature is left in possession of the power to create valid corporate bodies for towns, schools, mining, manufacturing, and for the thousand other purposes by which they may advance the public good.

Any act of incorporation suspends the general laws of the land so far as the individuals composing the corporate body are concerned. No corporate body can be put in operation without the suspension of general law. Fifty individuals, united by an act of incorporation, can sue and be sued as one person. Here is the suspension of the law which requires, in all other cases, all the individuals whose rights are to be adjudicated, if suing, to be made plaintiffs; if sued, to be made defendants. "When," says Angell & Ames, "the members of a voluntary association, without charter, are dispersed by death or otherwise, it has not their power to transfer the power given to the association, to other persons." Not so with regard to corporations. Here there is a suspension of law absolutely necessary to create a valid, efficient corporation. "If a grant of land be made," says Angell & Ames, "to a voluntary association, the right to the land cannot be assigned to their successors without numerous conveyances." Not so with regard to corporate bodies. "When they are incorporated they are considered as one person." Here there is a subversion of general law absolutely necessary to the creation of a corporation for any purpose whatever, and conferring the most valuable feature and privilege in the organization of all corporate bodies. So far, then, the proviso does certainly limit and restrict the extent and operation of the enacting clause. This is sufficient to illustrate the character of the limitation imposed.

This construction leaves the Legislature in full possession of the power to grant such charters of incorporation as they may deem necessary for the advancement of the thousand public purposes which the good of the country may demand, but gives the Legislature no power to grant to such corporations any rights, privileges or exemptions not necessary to its valid existence for general corporate purposes, unless the same law which creates it gives to every citizen of the State, who may bring himself within the provisions of such a law, similar rights and exemptions. It leaves the Legislature ample power to create corporations by special act, but gives no power to the Legislature, by such special act, to exempt the stockholders of such particular corporations from a liability to the debts which they, under cover of said corporation, may contract. This, it is insisted, can only be done by the passage of a general law which will give the same advantages to all those who may choose to avail themselves of the provisions of such general law to engage in that department of business.

The grant of special privileges to a few men engaged in one branch of business, is condemned by the whole drift of the report of the committee and by the analogy of the 7th section, to the evident purpose of the accompanying sections inserted in the constitution at the same time.

There is a deep pervading principle of republican justice and equality manifested in the condemnation of special privileges in special charters, and vindicated in the grant of special privileges, if granted at all, only by general law, free and open to all who may bring themselves within the provisions of such law.

The conclusion, therefore, is, that if the Legislature chooses to encourage the investment of capital dividual responsibility for the debts of the corporation, it can do so by general law, but not by special charter.

These views are submitted to the public with the expectation that they will receive a fuller examination than is here given to the subject, and that it will be brought to the test of judicial scrutiny.

Monopolies, No. 6.

At page 200 of the session acts of the State of Massachusetts for 1858, will be found the following bank charter:

Sec. 1. JARVIS B. BIRDWELL, E. G. LAMPSON, CONNEL HOTCHKISS, their associates and successors, are hereby made a corporation by the name of the President Directors and Company of the Shelburne Bank, to be established in the town of Shelburne, and shall so continue till the first day of October, 1878, and shall be entitled to all the powers and privileges and be subject to all the duties, liabilities and restrictions set forth in the public statutes of this Commonwealth relative to Banks and Banking.

Sec. 2. The capital stock of said bank shall consist of $100,000, to be paid in such instalments as the stockholders may direct, provided the whole capital stock shall be paid in on or before the first day of May, 1858.

Sec. 3. The stock of said Bank shall be transferrable only at its banking houses and on its books.

Sec. 4. Said corporation shall be subject to all the liabilities, requirements and restrictions contained in such acts as may be passed by the General Court (Legislature) in relation to Banks and Banking."

This short and simple law establishing the name, the location and capital stock of a corporation, is the model of all the bank charters passed of late years in Massachusetts, so far as we have examined. The corporation is declared subject to all the existing public statutes of the Commonwealth and to all that may be passed after its charter relative to Banks and Banking.

There are about one hundred and seventy Banks in Massachusetts, with a capital of about ninety millions of dollars. There are numerous public statutes relative to banks and banking, which govern the whole of them. They have a bank code. They do not legislate about one bank; they indeed cannot, for they all have the same rights and responsibilities; and there would be as much propriety in legislating about one butcher, or blacksmith lawyer or doctor, as about one person in the shape of a bank corporation, all having the same rights.

There is nothing in this charter about the size of the notes this Shelburne Bank shall issue. That is in the bank code to be found in the revised statutes and the whole one hundred and seventy banks must issue notes of the same size, and the Legislature can change the size at any session by a public general statute of the Commonwealth, applicable to all the banks, or persons pursuing the same business in the State of Massachusetts.

There is nothing said in this charter about the amount of real estate the Bank of Shelburne may hold. That is to be found in the bank law—act of 1828.

There is nothing said in this Shelburne charter about the tax the Bank shall pay; Act of 1828. They will make no contract with Mr. BIRDWELL and associates and successors for twenty years that the tax shall not be increased, for it might become necessary to raise the tax on everything else, and they ought to be free to raise it on the banks. This

what the tax should be, and thus sold out the taxing power for twenty years. The State of Massachusetts will not have one hundred and seventy, nor twenty special contracts, binding up the taxing power for twenty years. The State holds in its own hands the taxing power. The State of Massachusetts knew, when Mr. BIRDWELL and associates applied for a bank charter, that Ohio had made a banking law which stated what the tax should be; that the taxes on all property in Ohio had been greatly increased in consequence of loans for improvements, and that the taxes on banks had been increased by act; that the banks had refused to pay it; that the Supreme Court of Ohio ordered them to pay it; that the banks appealed to Washington, and there the Court said the Legislature could not recover the taxes—CATRON, CAMPBELL and DANIEL dissenting.

There is nothing in this charter as to what personal liability Mr. BIRDWELL and his associates are under to pay the debts of this corporation. That is to be found in the public statutes of the Commonwealth, in these words, "The holders of stock in any bank at the time its charter shall expire, shall be liable in their individual capacity for the payment of all bills which have been issued by said bank, and which shall remain unpaid, in proportion to the stock which they may respectively hold at the dissolution of the charter;" and Mr. BIRDWELL and his associates stand on the same platform with one hundred and seventy others in the State; and all the Legislature of Massachusetts has said is, that it will not hurt a hair of the head of Mr. BIRDWELL and his associates, dealers in notes and deposits unless it hurts one hundred and seventy other dealers in deposits and notes. See Act of 1849.

This charter does not say where the notes of Mr. BIRDWELL and associates shall be paid. But the act of 1840 says that no bank shall pay out from its counter any notes but its own, under penalty of $500. This Legislature intended to localize the circulation of paper, so that it should be redeemable where it circulated, and to some little extent prevent excessive issues.

There is nothing in this charter as to how much BIRDWELL and associate should issue, over and above their capital stock. If the Legislature had covenanted with HOTCHKISS, BIRDWELL & Co., that they should issue $150,000 of paper on $100,000 of stock which the company was bound for, and the Legislature had afterwards thought that there was $50,000 of mist and moonshine, with no corporate stock even to answer for it, they could not have remidied it, because the Legislature had covenanted for themselves and their successors, that the said BIRDWELL and his successors should, during 20 years, issue $50,000 of moonshine and mist.

There is nothing said as to how much specie Mr. BIRDWELL and his associates should keep. The bank commissioners found after the late suspension that the disproportion between the amount of paper in circulation and the money they held to meet it, astonished the public. They therefore said it was all wrong; that they should all be required to keep enough of specie to face the reasonable demand against them. The legislature required Mr. BIRDWELL and his associates to keep the insignificant sum of fifteen per cent. in specie or part thereof in exchange, and that the whole of these one hundred and seventy concerns should stand up to this public statute of the commonwealth.—Messrs. BIRDWELL, HOTCHKISS, and associates included. But the Bank commissioners report that the one hundred and seventy banks, or some of them, had evaded this statute, and had not kept the insignificant sum required by the statute, and that other legislation was necessary to remedy this trickery. If there had been any contract about the amount of coin they should keep, the state could not have remedied the main cause of the last suspension till their charters expired.

There is no contract with Mr. BIRDWELL and his successors as to the returns he shall make, for if it had been fixed at quarterly reports, the legislature might have found out that quarterly reports would have enabled all the one hundred and seventy banks to have made their reports on the same specie carried from one bank to another by railroad and might have desired that they should make a weekly return of their circulation, deposites and specie, as is required in New York and Louisiana. The Bankers of Philadelphia, says the Bankers' *Magazine*, met and thought it advisable that all the banks should be required to make weekly returns so that the more unscrupulous ones should not get a false credit. If Massachusetts had bargained to and with Mr. BIRDWELL and his successors and granted and confirmed to them, the aforesaid BIRDWELL and his successors, that for and during the term of fifteen years the legislature of Massachusetts then and there sitting, and all their successors acting to and for the people of the commonwealth of Massachusetts, should be bound and firmly obligated not to require of the said BIRDWELL and his successors to make weekly reports it would not matter, perhaps, with BIRDWELL and his associates whether the interests of the good people of Massachusetts would or would not be promoted by the weekly reports of his specie circulation and deposits, for it might be the interest of the aforesaid BIRDWELL and associates not to show to the good people of Massachusetts weekly the extent of their debts due and ability to meet them, and therefore Mr. BIRDWELL and his associates might state to the Legislature of Massachusetts "that is not in my covenent with you." You Massachusets, agreed to let me bank for fifteen years, making quarterly reports only. This is the covenant, and we require you, the aforesaid State of Massachusetts, party of the first part, to stand by your bargain with the party of the second part, till the end of the fifteen years, as you agreed to do, or we, BIRDWELL and associates, will drag you under the 25th section of the Judiciary act of 1789, to Washington to test whether you have not bargained, granted and confirmed to us and our successors, for yourselves, and your successors in the halls of legislation for fifteen years not to require, us the aforesaid BIRDWELL and associates and successors, to make weekly reports." But so it happened that the Legislature of Massachusetts would not then and there covenant and agree to and with the said HOTCHKISS, BIRDWELL, and their successors, that they and their successors for ten consecutive sessions should not pass any public statute about banks and banking, nor pass any law relative thereto, which should bind Mr. BIRDWELL and his associates. But, on the contrary thereof, the Legislature of Massachusetts have utterly repudiated any such bargain, covenant, agreement, or stipulation, for themselves or their successors, to and with, the said BIRDWELL and successors, that they would not pass at all times such public statutes, relative to banks and banking, including the said BIRDWELL and associates and successors, as in their judgment and that of their successors might be deemed necessary and proper to secure the people of Massachusetts against the frauds and delinqueneies of the 170 incorporated banks in the State; and they do, therefore, expressly declare to Mr. BIRDWELL and his successors, that they will pass any such statutes; and that if it should become manifest to the people of Mas-

sachusetts, that the Banker's Magazine is right, when it states that the general banking law of New York, Louisiana, and other States, requiring security, has been eminently successful, and that no system is safe that does not require security to be deposited, and that Governor Morgan and the Superintendent of Banking in New York are right in declaring that security is a most valuable and necessary feature in all banks, then, and in that event the Legislature of Massachusetts could say, as doubtless they will say, to said BIRDWELL and associates, that we, the Legislature of Massachusetts, being satisfied, from the experience in the late crisis, that the Banker's Magazine, Governor MORGAN, of New York, and Mr. COOKE, Superintendent, are right, and that no system is safe without a deposit of security for the redemption of your notes, do order that you, BIRDWELL and associates, do, in the course of one year, deposit in the hands of the treasurer of the State security for the redemption of notes, as we are satisfied that you can convert your effects or run away at any time, leaving nothing to pay your debts. And as evidence that they will so say, the last Boston *Evening Gazette* says:

"The injunction put upon the Bass River Bank shows what rascality has been carried on for a long time."

Upon which the Boston *Post* of the 1st November says:

"Every case like the Bass River makes us feel more deeply the propriety of having every bank bill in the State secured by some sound property entirely independent of the institution that creates it, both as regards the property and the care of it. Every bill ought to be secured by property in the hands of the government."

They can say they have become satisfied that our distinguished and well beloved servant, EDWARD EVERETT, was right when he expressed the idea that it would be well for the people of Massachusetts to withdraw from the banking corporations the right to issue notes, and leave them to deal in deposits and exchange alone; therefore, we do command the said BIRDWELL and associates to withdraw, in three years, the notes issued.

But, lest Mr. BIRDWELL and associates should feel alarmed lest the mobocratic tendencies of the Legislature should assault the aforesaid BIRDWELL and associates in their corporate functions, and without Information in the nature of *quo warranto*, seize, by repeal, his corporate privileges, discharge their debtors, and thus commit an outrage on them, to said BIRDWELL and associates, like unto burning down their house and destroying their cattle; and lest the said Legislature, by virtue of the repealing power should commit a sort of grand larceny, by getting in their hands their cash on the death of their corporate capacity, the Legislature of Massachusetts say to said BIRDWELL and associates, that more than five hundred years ago some English Barons, sword in hand, forced King John to stipulate as follows: That "no freeman shall be taken, or imprisoned, or disseized of his freehold, liberties, or privileges, or outlawed, or exiled, or in any manner destroyed or deprived of his life, liberty or property, but by the judgment of his peers, or by the law of the land;" that this was now the law in Massachusetts; that the law of the land was a public statute of the commonwealth of Massachusetts, and that the said BIRDWELL and his associates and successors could not therefore, be exiled, outlawed, taken or imprisoned, disseized of his freehold, liberties or privileges, or deprived of his life, liberty or property.

And thereupon Mr. BIRDWELL became and was satisfied and entered on his business of dealing in deposits, exchanges, and loaning his notes.

And so the Legislature at the last session began a bank code which they begin to lay down certain great land marks by which all Banks in Tennessee should be regulated, without mentioning any bank whatever, or legislating for or against "any individual," "person," "inhabitant," or bank. They attempted to say what the size of the notes should be, where they should be issued and paid, &c.

That act fell as it were dead born from the hands of the General Assembly, by reason of chartered rights.

And now the Legislature must decide whether they will say that the Banks of Tennessee hereafter created should be subject to all public statutes passed relative to banks and banking, or whether they will tie up the hands of succeeding Legislatures under the belief that they can see far enough into the deep, dark mysterious future, to know exactly how they ought to stand for fifteen years, and that if they do not tie up the hands of all the succeeding Legislatures, such succeeding Legislatures will disregard the obligations of the constitution, break up the corporate rights and destroy the property of all banking corporations in the State.